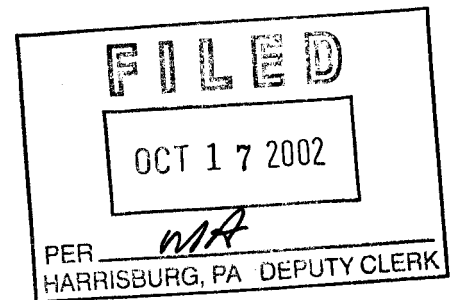


10/17/02
MFAIN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**HARRY E. WILLIAMS,****Plaintiff**


v.

**PENNSYLVANIA TURNPIKE
COMMISSION,****Defendant****CIVIL NO. 1:CV-01-0877****ORDER**

The following is the background of this order. On October 11, 2002, Plaintiff's counsel contacted the undersigned's chambers staff requesting a conference call regarding the taking of a trial deposition of Joseph McCool, a non-party to this action. Plaintiff contends that he was unable to take Mr. McCool's deposition during discovery because Mr. McCool is a non-party that lives beyond the 100 mile radius from the court.

After considering the arguments presented during the conference call, the court will deny Plaintiff's request. The discovery deadline in this matter expired on July 31, 2002, and Defendant filed a motion for summary judgment on August 30, 2002. The time for taking depositions has expired. Plaintiff, however, insists that he does not seek a discovery deposition, but rather a deposition for use at trial. However, Plaintiff may subpoena Mr. McCool to testify at trial upon a proper showing that Mr. McCool will not incur substantial expense in attending, or, alternatively, that Plaintiff will pay Mr. McCool's expenses for attending. *See* Fed. R. Civ. P. 45(c)(3)(A)(ii) (stating that regardless of the distance the witness must

travel, if he lives within the state where the trial will be held, the court may order him to attend the trial) and 45(c)(3)(B)(iii) (stating that the court may quash a subpoena which requires a party to incur substantial expense to travel more than 100 miles to attend trial). Therefore, to the extent Plaintiff wishes to procure testimony from Mr. McCool, he can accomplish this objective by subpoenaing Mr. McCool to testify at trial. Plaintiff has offered no justification as to why the court should not honor the protections afforded to subpoenaed witnesses under Rule 45. Therefore, the court will deny Plaintiff's request. **IT IS SO ORDERED.**



SYLVIA H. RAMBO
United States District Judge

Dated: October 7, 2002.